

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**ESTEBAN PEREZ, FELIPE GALINDO, and
DELFINO LOPEZ,**

17-CV-7837

Plaintiffs,

PLAINTIFFS' PRE TRIAL ORDER

-against-

**50 FOOD CORP. (D/B/A SILO CAFÉ) and
ANDREW SUNG (AKA HWAN SEUNG SUNG),
Defendants.**

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The Plaintiffs in the above-captioned matter hereby submit this Final Pre-Trial Order pursuant to Fed. R. Civ. P. 16 and 26(a)(3) and the individual practice rules of The Honorable Richard J. Sullivan:

I. PLAINTIFFS' COUNSEL

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II. SUBJECT MATTER JURISDICTION

This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA"), 29 U.S.C. § 216, and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

III. PLAINTIFFS' CLAIMS

Plaintiffs' Complaint, filed on October 12, 2017, asserts four causes of action arising out of the Plaintiffs' employment in the Defendants' deli, Silo Cafe. Count 1 alleges that Defendants failed to compensate Plaintiffs for overtime worked at one and one-half times the Plaintiffs' regular rate of pay for each hour worked in excess of forty hours in violation of the Fair Labor Standards Act from October 12, 2011 through December 31, 2015. 29 U.S.C. § 207(a). Count 2 alleges that Defendants failed to pay overtime pay in violation of the New York Labor Law during the same period. 12 NYCRR § 142-2.2. Count 3 alleges that Defendants failed to furnish Plaintiffs a written notice containing the information required by New York Labor Law § 195(1)(a) on or before February 1, 2012, nor on or before February 1, 2013, nor on or before February 1, 2014. Count 4 alleges that Defendants failed to provide Plaintiffs with full and accurate paystubs each time Defendants paid wages to Plaintiffs throughout the duration of their employment. NYLL§ 195(3).

IV. TRIAL

This is a bench trial. Plaintiffs will require approximately 2 days for their principal case, most of which will be presented through a Spanish interpreter. One witness will require a Korean interpreter.

V. CONSENT TO MAGISTRATE JUDGE

The parties have not consented to trial by the magistrate judge.

VI. WITNESS LIST

A. Witnesses for Plaintiff.

Plaintiffs intend to offer the testimony of Plaintiffs Esteban Perez, Felipe Galindo, and Delfino Lopez. Plaintiffs will also offer the testimony of Defendant Andrew Sung and witness, Minchul Kim.

VII. DEPOSITION TESTIMONY

Deposition of Andrew Sung, May 29, 2018

Page & Line	Summary	Claim
25:6-8; 18-20	Sung is sole owner and shareholder of 50 Food Corp	Individual liability
155:15-25	Sung implemented/created the payment reports used at 50 Food Corp.	Individual liability
66:3-22	Sung describes purpose of visits to 50 Food Corp. and review records	Individual liability
70:5-25	Manager Kim needs Sung's permission to give raises to employees	Individual liability
71:2-25	Manager Kim needed Sung's approval to give raises and to hire/fire employees	Individual liability
75:1-16	Sung advised Manager Kim to issue Plaintiff Galindo a warning	Individual liability
83:14-25	Sung instructed Manager Kim to discipline employees	Individual liability
96: 22-25; 97: 2-19	Sung makes final decision of when to close business	Individual liability
140:8-25; 141:11-24	Sung instructed Manager Kim to use weekly payment report document to track hours and payments	Individual liability
149:5-15	Sung instructed Manager Kim to fill out wage notices	Individual liability
151: 3-21	Sung authorizes pay rates	Individual liability
152:12-16	Sung authorizes all raises	Individual liability
155:15-25	Sung implemented the practice of using the same payroll records at both Silo Cafes.	Individual liability
8:16-25	Sung co-owned a landscape business for 25 years	Liquidated Damages

10:3-25	Sung was involved in preparing payroll, HR matters, and hiring employees for landscape business	Liquidated Damages
12:12-25	Sung also owned a book store on Long Island	Liquidated Damages
22:6-13	Sung also owns another café/deli that also goes by the name Silo Café ("32 Food Corp.")	Liquidated Damages
158:11-25	In 2007 or 2008, "32 Food Corp." was investigated by New York State Department of Labor (NYSDOL). Sung attended the hearing related to that case	Liquidated Damages
169:9-18	32 Food Corp. manager attended seminar sponsored by NYSDOL	Liquidated Damages
164:16-21	In 2007/08, "32 Food Corp." settled case with NYSDOL for about \$25,000.00	Liquidated Damages
144:9-25	Sung had a conversation with an accountant about records he needed to keep and he told him about the need to keep pay notice	Liquidated Damages
157:7-24	"32 Food Corp." was investigated twice by NYSDOL	Liquidated Damages
168:14-19	A manager from "32 Food Corp." attended a conference at NYSDOL	Liquidated Damages

Depositions of Minchul Kim

June 25, 2018 30(b)(6) Deposition

Page & Line	Summary	Claim
13:4-11	Kim does not acknowledge overtime when a worker does not get authorization to work longer than scheduled hours or when employees are working slowly.	Overtime
24:16-25	Kim states that if employees worked later than 4 p.m. then they are lazy and he does not consider it over time.	Overtime
31:15-22	There were times when the workers received their pay but did not sign the weekly attendance record or weekly payment reports	Overtime

33: 1-10	Kim states that less than 25 times during the course of Kim's employment that workers received pay without signing payment report or weekly attendance record.	Overtime
35:13-25	Kim only gave copies of payment weekly payment reports sometimes upon payment of wages.	Wage Notice/Statement

May 22, 2018 30(b)(6) Deposition

Page & Line	Summary	Claim
18:21 - 19:8	Sung trained Kim re: payroll including hourly rate and overtime rate	Individual liability
19:9 - 19:11	Sung told Manager Kim to have employees sign for pay every week	Individual liability
19:12 - 19:18	Sung set pay	Individual liability
20:3 - 20:11	Sung created payroll docs	Individual liability
38:23 - 39:6	Sung is sole owner of 50 Food Corp.	Individual liability
41:17 - 41:19	Sung decided when 50 Food Corp. would close	Individual liability
50:20 - 51:4	Sung set start and end times for employees	Individual liability
51:7 - 51:9	Sung set start and end times for employees	Individual liability
53:3 - 53:5	Sung instructed Manager Kim to track employees start and end times	Individual liability
67:15 - 68:2	Sung set policy for firing employees	Individual liability
71:21 - 71:24	Sung decided to give bonuses	Individual liability
72:3 - 72:5	Sung decided to give bonuses	Individual liability
72:11 - 73:11	Sung gave record keeping instructions	Individual liability
81:11 - 81:18	Some times employees signed pay sheets much later	Inaccurate records
88:11 - 88:17	Goal was to ensure employees received a weekly salary	Inaccurate records
89:9 - 89:13	Goal was to ensure employees received a weekly salary	Inaccurate records
93:14 - 93:22	Sung instructed Kim to use wage payment forms	Individual liability
95:18 - 95:22	Sung was in charge of payroll for first two years	Individual liability
103:25 - 104:5	Sung set rates of pay	Individual liability
106:7 - 106:9	Sung made the decision to issue raises	Individual liability
106:10 - 106:18	Sung kept payroll files	Individual liability

114:17 - 114:19	Kim had workers sign several weekly payment reports at once	Overtime/reliability of records
115:17 - 115:21	Plaintiffs signed several weekly payment reports at once	Overtime/reliability of records
117:5 - 117:11	Kim had workers sign several weekly payment reports at once on multiple occasions	Overtime/reliability of records
130:6 - 130:9	Sung had authority to instruct Plaintiff Perez	Individual liability
132:9 - 132:13	Salary increases were approved by Sung	Individual liability
134:23 - 135:3	Sung had authority to instruct Plaintiff Galindo	Individual liability

5/22/2018 Individual Deposition

Page & Line	Summary	Claim
5:5 - 5:8	Sung reports to 50 Food Corp. once a week or every other week	Individual liability
8:7 - 9:2	Manager Kim would get Sung's permission before firing employees	Individual liability
22:2 - 22:8	Kim concedes that Plaintiff Lopez receives a set weekly salary	Overtime
23:23 - 24:2	Sung instructed Kim to have employees sign paid sick leave forms	Individual liability
27:7 - 27:10	Sung decided to stop paying holidays	Individual liability

VIII. EXHIBITS

Exhibit	Bate Stamp No.	Description
Exhibit A	P000130- P000139	Documents from FOIL Request to New York State Department of Labor regarding the investigation of Silo Café, 32 Food Corp., owned by Defendant Andrew Sung
Exhibit B	P000002-3	Wage Notices (Form LS54S) dated 4/29/15 and 7/6/16 signed by Felipe Galindo
Exhibit C	P000006	Wage Notice (Form LS54S) dated 7/6/16 signed by Delfino Lopez

Exhibit D	None	Stipulation signed by parties dated March 29, 2018
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Dated: September 20, 2018
Queens, NY

BY:

/s/

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SO ORDERED

The Honorable Richard J. Sullivan